

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

SLOPER-WILLEN COMMUNITY  
AMBULANCE SERVICE, INC.

Employer

and

INTERNATIONAL ASSOCIATION OF EMTS  
AND PARAMEDICS, NAGE, SEIU, AFL-CIO

Petitioner

Case No. 34-RC-1793

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Employer is a not-for-profit membership corporation located in Wappingers Falls, New York, where it is engaged in providing ambulance services. Petitioner seeks to represent a unit of approximately 85 emergency medical technicians (EMTs), paramedics and dispatchers. Although otherwise in accord as to the scope and composition of the unit, the Employer contends that the petition should be dismissed on the

ground that all of the petitioned-for employees, through their “membership” in the Employer, have an effective voice in the formulation and determination of corporate policy. The Employer also contends, contrary to the Petitioner, that all dispatchers must be excluded from the petitioned-for unit because they are supervisors within the meaning of the Act. There is no history of collective-bargaining concerning the petitioned-for unit.<sup>1</sup>

#### Membership Status of Petitioned-for Employees

As a not-for-profit membership corporation, the Employer has no shareholders in the traditional sense. Rather, it presently has 113 “members” divided into three categories: active, life and sustaining. The 83 active members consist of all paid employees and volunteers who average more than 15 hours of work per month. The 30 life members are former active members who have accumulated 10 years of active duty with the Employer. Sustaining members, of which there are presently none, are those who contribute over \$250 in a given year to the Employer. All paid employees, including EMTs, paramedics and dispatchers, become active members after serving a six month probationary period and satisfying the 15 hours per month requirement.

The membership as a whole has only two responsibilities: to elect the Board of Trustees and to vote on changes to the Employer’s by-laws. With regard to election of the Board of Trustees, the record reflects that there are at least 12 but no more than 15 Board of Trustee members who serve staggered 5-year terms. As a result, between two and three Board members are elected each year. In August, a nominating committee consisting of three Board members and two members-at-large,<sup>2</sup> is appointed by the president of the Board. The nominating committee is responsible for nominating a slate of candidates to fill any open or vacant Board positions. The proposed slate is presented to the Board in September, and the election is held by mail ballot during November and December. The ballot lists the names of the nominated candidates, as well as a place for write-in candidates. Only active and life members who average at least 15 hours of work per month may vote in the election. Although there is nothing to preclude active members who are paid employees from running for the Board, the by-laws require all paid employees to

---

<sup>1</sup> A Decision and Direction of Election issued in 1988 in Case No. 3-RC-9224 finding appropriate a unit of the Employer’s EMTs, paramedics, drivers and mechanics. The Employer’s contention regarding the alleged managerial status of its employees was rejected by the Regional Director for Region 3. No request for review was filed.

<sup>2</sup> The at-large members are typically active members, including paid employees.

terminate their active employment in order to serve their term on the Board. Members of the Board are considered active members during their term of office. Most Board members run for re-election and serve more than one five-year term. No paid employee has ever been elected to the Board, and no paid employee has been nominated to serve on the Board for at least the past five years.

In the most recent Board election held in December 1999, there were two nominated candidates, both of whom were incumbent Board members, to fill two open positions. Ballots were mailed to 113 members. According to the Employer, approximately half of those ballots were mailed to employees in the petitioned-for unit. Thus, it appears that approximately 30 paid employees in the petitioned-for unit did not meet the eligibility requirement to be an active member at the time of the election, apparently because they had not been employed for the required six month probationary period. 55 ballots, a typical number according to the Employer, were actually cast in the election. The two nominated candidates were re-elected with 31 and 30 votes, respectively. Two write-in candidates, one of whom works for the Employer as a per diem EMT and the other who works for a volunteer ambulance service, each received 24 votes.<sup>3</sup>

With regard to amending the by-laws, the record reflects that any active member may propose an amendment directly to the Board. If approved by a two-thirds vote of the Board, the proposed amendment is put to a secret ballot vote of the membership, which again requires a two-thirds majority for approval. During the past five years there has been only one amendment to the by-laws. This involved the voting rights of sustaining members.

The Board of Trustees is responsible for governing the Employer's affairs. It annually elects four officers from among the Board members: the president, who is the Employer's chief executive officer; a vice-president, a secretary and a treasurer. The president is responsible for appointing all committees, including benefits, publicity, fund raising, bylaws and awards dinner. All active members, including paid employees, are eligible to serve on such committees. The authority of such committees, however, is limited to making recommendations to the Board. The Board is also responsible for hiring an Executive Director, who the by-laws specify "shall take full charge of the organization, staffing, and assigning of the crew, including dispatchers, and shall be responsible for the

---

<sup>3</sup> The record reflects that the two write-in candidates were allegedly "sponsored" by an "employee association". However, there is no evidence regarding the nature of such "sponsorship" or the membership of such "employee association."

maintenance and proper control of all equipment.” In this regard, the Executive Director annually recommends to the Board “the organizational structure and management and employees deemed necessary for the efficient operation of the [Employer’s] service”, and is then “empowered to hire personnel as necessary for efficiency and within the limitations of the budget and approval of the Board of Trustees.” According to the incumbent Executive Director, he formulates and implements all personnel policies with very little input or review by the Board.

As a result of the expansion of the ambulance services it provides to local municipalities and volunteer ambulance squads, the Employer has more than doubled its call volume as well as the number of paid and volunteer EMTs, paramedics and dispatchers over the past five years. The record does not reflect, however, any changes in the number of active and life members during the same period of time.

It is well-established that employee-shareholders will not be excluded from collective bargaining units unless the employee-shareholder as an individual or as part of the employee-shareholder group has “an effective voice in the formulation and determination of corporate policy.” *Science Applications International Corporation*, 309 NLRB 373, 374 (1992), quoting *Coastal Plywood & Timber Co.*, 102 NLRB 300 (1953). Critical to such determination is not the mere possession of shares in the employer, see, e.g., *Everett Plywood & Door Corp.*, 105 NLRB 17,19 (1953), but rather the “degree of participation in management and/or labor policy formulation.” *Science Applications International Corporation*, supra, quoting *Airport Distributors*, 280 NLRB 1144, 1150 (1986). A significant factor in determining whether the proposed unit possesses the necessary amount of control of corporate policy through their proportional ownership of stock is actual membership on the employer’s board of directors. See, e.g., *Centurion Auto Transport, Inc.*, 329 NLRB No. 42, slip op. at 4-7; *Upper Great Lakes Pilots, Inc.*, 311 NLRB 131, 132 (1993); *Florence Volunteer Fire Dept., Inc.*, 265 NLRB 955 (1982); *Fort Vancouver Plywood Co.*, 235 NLRB 635, 644-645 (1978); *Sida of Hawaii, Inc.*, 191 NLRB 194, 195 (1971); *Red & White Airway Cab Co.*, 123 NLRB 83, 85 (1959). The Board also considers whether employee-shareholders enjoy preferential treatment from other non-shareholder employees such that a “divergence” or lack of community of interest would be created within an otherwise

appropriate unit. *Fort Vancouver Plywood Co.*, supra; *Brookings Plywood Corp.*, 98 NLRB 794, 798-799 (1952).

Based upon the foregoing and the record as a whole, I find insufficient evidence to establish that the employees in the petitioned-for unit have such “an effective voice in the formulation and determination of corporate policy” to deprive them of their statutory rights as employees to representation by a labor organization of their choice. More particularly, I note that although employees in the petitioned-for unit are not precluded from running for election to the Board of Trustees, they must relinquish their employee status in order to serve on the Board of Trustees. Thus, the only “voice” that employees have in formulating and determining the Employer’s policies is limited to voting in Board of Trustee elections, proposing and voting on amendments to the by-laws, and serving on committees which make recommendations to the Board of Trustees. Contrary to the Employer’s contention, the employees’ potential ability as a “voting bloc” to influence the outcome of Board of Trustee elections, by-law amendments and committee recommendations is far too speculative and uncertain to warrant their exclusion from the protections of the Act. In this regard, I note the absence of any evidence that employees in the petitioned-for unit have ever utilized their membership status to influence the Employer’s policies and practices. See *S-B Printers*, 227 NLRB 1274 (1977). To the contrary, the outcome of the most recent Board of Trustee election reflects the unlikelihood that employees in the petitioned-for unit could form a “voting bloc” sufficient to influence the outcome of a Board of Trustee election or by-law amendment. Moreover, the Employer’s contention that employees in the petitioned-for unit already constitute a majority of the voting membership, and that such majority will increase to 75% by the next Board of Trustee election, is not supported by the record. In this regard, the Employer admits that only half of the eligible voters in the last election were unit employees. Furthermore, the Employer proffered no evidence to support its assertion that the additional 30 employees in the petitioned-for unit who were not eligible to vote in the last election will in fact be eligible to vote in the next election. In the absence of such evidence, it is just as likely that turnover and new hires will result in little or no difference in the number of eligible employees in the petitioned-for unit who can vote in the next Board of Trustees election. Thus, the Employer’s assertion that employees in the petitioned-for unit will, through bloc voting, take control of a majority of Board of Trustee positions, or propose and approve by-law amendments favorable to their cause, is unsupported by the record and far too speculative to deprive such employees of the

protection of the Act. *Science Applications International Corp.*, supra. Finally, I note that because all employees in the petitioned-for unit qualify to be active members with identical membership privileges, there is no danger of a divergence or lack of community of interest between competing employee membership groups.

Accordingly, the Employer's motion to dismiss the petition is hereby denied.

#### Dispatchers

As noted above, the Employer's Executive Director, Frank Gildea, is primarily responsible for the overall supervision of the Employer's operations. Reporting directly to Gildea is Director of Operations Tim Scannell, Administrative Manager Louise Dalton, and Director of Finance Stephanie Gerentine. Reporting directly to Scannell are Operations Manager Bruce Heath, and four paramedic supervisors. Scannell works Monday through Friday, 9 a.m. to 5 p.m. Either Heath or one paramedic supervisor is assigned to work the 7 a.m. to 5 p.m. shift and the 5 p.m. to 7 a.m. shift each day. There are three full-time and three part-time dispatchers who work one of the following shifts: 7 a.m. to 3 p.m., 3 p.m. to 11 p.m., or 11 p.m. to 7 a.m. Two of the part-time dispatchers also work as EMTs for the Employer. During the day, EMTs and paramedics, who spend most of their working time in an ambulance in the field, work 8-hour staggered shifts beginning at 6 a.m., 7 a.m., 8 a.m. and 9 a.m. The record does not clearly reflect the shift times worked by EMTs and paramedics during the evening and night shifts.

The overwhelming majority of the Employer's operations consists of providing basic life support ambulance service in Dutchess County, New York.<sup>4</sup> Dutchess County is divided into four zones. During the day shift one ambulance containing an EMT and a paramedic is situated in each zone.<sup>5</sup> All 911 emergency calls are received by the Dutchess County dispatch center, which then sends a series of tones describing the nature and location of the call to the Employer's facility. The Employer's dispatchers then decipher the tones, and assign an ambulance to cover the call. In performing this basic dispatch function, the dispatcher is guided by a "dispatch procedure manual", a loose-leaf binder prepared by the director of operations and other supervisors. The manual, which currently consists of about

---

<sup>4</sup> The Employer also supplies "advance life support" services in Putnam County, New York, which consists of providing a paramedic in a "fly car" to assist volunteer ambulance services where such advance life support is warranted. The Employer also transports patients between and among certain hospitals and nursing homes on a non-emergency basis.

<sup>5</sup> The record does not reflect the number of ambulances assigned during the evening and night shifts.

20 pages, describes the dispatchers' responsibilities in specific situations, and contains certain forms which they must complete. The manual is periodically updated with memos from management concerning other dispatch situations. As discussed in more detail below, the record reflects that the manual covers most situations that may confront a dispatcher in the course of a shift.

When the dispatcher receives a call for an ambulance, the dispatcher must assign the call to the nearest available ambulance. Upon doing so, the dispatcher is then responsible for "re-zoning" the remaining ambulances in order to insure proper coverage throughout Dutchess County. This may require the dispatcher to instruct one or more ambulances to change their location to another zone. As each ambulance is assigned to a call, the dispatcher continues the "re-zoning" process described above. In the event that only one ambulance remains available, the dispatcher must insure that such ambulance is situated in the central zone, which is the geographic center of Dutchess County.

When all ambulances are in service, the dispatcher is responsible for calling in additional employees in order to insure proper emergency coverage. This occurs approximately two or three times per week. In calling in additional employees, the dispatcher utilizes a "call-in" list of employees which is prepared by the director of operations and posted in the dispatch office. The list contains the names of employees, in order of seniority, who live within a certain distance of the Employer's facility. The dispatcher will call those employees by seniority until a replacement crew is secured. The dispatcher can also use a separate "availability" list containing the names of employees who wish to be called in for additional work during certain periods of time. The dispatcher cannot require any employee to report to work in such circumstances. In the event that the dispatcher is unable to secure an additional crew, the dispatcher contacts the paramedic supervisor for further instructions. In most cases the paramedic supervisor will either return to, or remain at, the Employer's facility to serve on the emergency crew. In the event that there is an emergency call prior to the time that the dispatcher can secure an additional crew, the dispatcher will refer the call to the Dutchess County Office of Emergency Response, which will then secure an ambulance from a volunteer or other commercial ambulance company.

Because overtime is usually incurred when employees are called in to work by the dispatcher, advance supervisory approval is ordinarily secured by the dispatcher. Occasionally, however, when the supervisor is away from the Employer's facility on a call or

out of radio contact, the dispatcher may be unable to contact a supervisor to pre-approve the overtime. Although not entirely clear, it appears that in such circumstances the dispatcher will initial the employee's timecard to indicate that the overtime was actually worked. Dispatchers may also initial employee time cards to indicate overtime worked where a supervisor is not available. The record reflects, however, that dispatchers have been disciplined for failing to secure supervisory approval of overtime. Overtime may also result when an ambulance crew is dispatched to a call which takes them past their normal shift change. Although the dispatchers are required to minimize such occurrences, in many cases they have no discretion but to assign a call to a crew which will take the crew past their normal shift change. Nevertheless, it appears that the dispatchers are supposed to secure supervisory approval for such overtime as well.

If an incident in the field, such as an excessive response time, comes to a dispatcher's attention, the dispatcher may instruct an EMT or a paramedic to prepare an incident report, which goes directly to a supervisor. Dispatchers can also prepare incident reports concerning the conduct of EMTs and paramedics. Such reports are independently investigated by a supervisor, who makes a disciplinary decision without the input or recommendation of the dispatcher. Dispatchers may also write a report which commends an EMT or paramedic for their work. Such reports are forwarded to the supervisor, who is responsible for taking any further action. There is no evidence that any reports prepared by the dispatchers have affected the employment status of any employee.

As noted above, a paramedic supervisor or the operations manager is present at the Employer's facility for each shift. However, approximately 20 to 30% of the supervisor's time is spent away from the facility performing work in the field. During such periods, unless he is temporarily in a radio dead spot or is occupied by an ambulance call, the supervisor is always available to the dispatcher by radio. In addition, the dispatcher can utilize a pager to contact the director of operations, the operations manager, or a paramedic supervisor at any time during their shift.

The record establishes that dispatchers cannot hire, fire, discipline, promote, transfer, lay off, recall, or reward employees. There is also no evidence in the record that dispatchers have any involvement in adjusting employee grievances. Dispatchers are paid \$10.00 per hour. The record does not reflect the pay rates and benefits of EMTs and paramedics.



Based upon the foregoing and the record as a whole, I find that the dispatchers are not supervisors within the meaning of Section 2(11) of the Act. More specifically, while the dispatchers generally direct the work of EMTs and paramedics, such authority is routine in nature and guided strictly by the Employer's established policies and procedures, and does not require the exercise of independent judgment. *Mississippi Power & Light Company*, 328 NLRB No. 146 (July 26, 1999); *Express Messenger Systems, Inc.*, 301 NLRB 651, 654-655 (1991); *Carey Transportation, Inc.*, 119 NLRB 332 (1957); *Auto Transports, Inc.*, 100 NLRB 272 (1952). Moreover, the dispatchers authority to call-in employees to work on an overtime basis is limited to emergency situations, is proscribed by established procedures, and in almost all cases is subject to management approval. *Mississippi Power & Light Company*, supra, slip op. at 8. As for their role in relaying information concerning employee work performance, given the fact that higher management reviews and independently investigates such work performance and determines the appropriate action, I find that the dispatchers are essentially conduits of information and that their responsibility is merely reportorial in nature. *Pony Express Courier Corp. v. N.L.R.B.*, 981 F.2d 358, 365, 142 LRRM 2071, 2076 (8<sup>th</sup> Cir. 1992); *Peco Energy Co.*, 322 NLRB 1074, 1983 (1997); *Rest Haven Living Center, Inc. d/b/a Rest Haven Nursing Home*, 322 NLRB 210, 212 (1996). Accordingly, I shall include the dispatchers in the petitioned-for unit.

In view of the above, it is my determination that the following employees constitute a unit appropriate for the purposes of collective bargaining with the meaning of Section 9 (b) of the Act:

All Emergency Medical Technicians (EMTs), paramedics and dispatchers employed by the Employer at its Wappingers Falls, New York facility; but excluding the Executive Director, the Director of Operations, the Administrative Manager, the Director of Finance, paramedic supervisors, office employees, maintenance employees, and guards, professional employees, and other supervisors as defined in the Act.

#### DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit described above at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also

eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. These eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by International Association of EMTs and Paramedics, NAGE, SEIU, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision and Direction of Election, the Employer shall file with the undersigned an eligibility list containing the *full* names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before February 22, 2000. No extension of time to file the list shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

#### Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by February 28, 2000.

Dated at Hartford, Connecticut this 14th day of February, 2000.

/s/ Peter B. Hoffman  
Peter B. Hoffman, Regional Director

National Labor Relations Board  
Region 34

177-2401-6750  
177-8560-4000  
177-8560-8090